

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

CODY LEAVITT,

Petitioner,

v.

NEVEN, *et al.*,

Respondents.

Case No. 2:12-cv-00625-MMD-NJK

ORDER


This closed action is a petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 by a Nevada state prisoner. On February 3, 2015, this Court granted respondents' motion to dismiss the amended petition. (Dkt. no. 68.) The Court determined that all claims in the amended petition were unexhausted, warranting the dismissal of the amended petition without prejudice. (*Id.*, at 8.) In the dismissal order, the Court denied petitioner a certificate of appealability. (*Id.*, at 8-9.) Judgment was entered on February 3, 2015. (Dkt. no. 69.)

On September 25, 2015, the Court denied petitioner's motion for reconsideration of the order dismissing the amended petition. (Dkt. no. 79.) The Court ruled that petitioner failed to make an adequate showing under either Rule 59(e) or Rule 60(b) to justify granting his motion for reconsideration. (*Id.*) Most recently, petitioner has filed a motion for a certificate of appealability regarding the order denying his motion for reconsideration. (Dkt. no. 80.)

1 In order to proceed with his appeal, petitioner must receive a certificate of
2 appealability. 28 U.S.C. § 2253(c)(1); Fed. R. App. P. 22; 9th Cir. R. 22-1; *Allen v.*
3 *Ornoski*, 435 F.3d 946, 950-951 (9th Cir. 2006); see also *United States v. Mikels*, 236
4 F.3d 550, 551-52 (9th Cir. 2001). Generally, a petitioner must make “a substantial
5 showing of the denial of a constitutional right” to warrant a certificate of appealability.
6 *Id.*; 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000). “The
7 petitioner must demonstrate that reasonable jurists would find the district court’s
8 assessment of the constitutional claims debatable or wrong.” *Id.* (quoting *Slack*, 529
9 U.S. at 484). In order to meet this threshold inquiry, the petitioner has the burden of
10 demonstrating that the issues are debatable among jurists of reason; that a court could
11 resolve the issues differently; or that the questions are adequate to deserve
12 encouragement to proceed further. *Id.* In the present case, the denial of petitioner’s
13 motion for reconsideration was appropriate. No reasonable jurist could conclude that
14 this Court’s order of September 25, 2015 was in error. Petitioner is not entitled to a
15 certificate of appealability.

16 It is therefore ordered that petitioner’s motion for a certificate of appealability (dkt.
17 no. 80) is denied.

18 DATED THIS 28th day of October 2015.

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21 MIRANDA M. DU
22 UNITED STATES DISTRICT JUDGE
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